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Martin Mador, Legislative Chair

Government Administration and Elections Committee
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Testimony In Vigorous Opposition to
SJR 12 Resolution Proposing a Constitutional Amendment Concerning the Expansion of the Purview of the Legislative Regulations Review Committee
and
SB 390 AAC The Purview Of The Legislative Regulation Review Committee

I am Martin Mador, 130 Highland Ave., Hamden, CT 06518. I am the volunteer Legislative Chair for the Sierra Club-Connecticut Chapter, representing here today our 8,000 Connecticut members. I hold a Masters of Environmental Management degree from the Yale School of Forestry and Environmental Studies.

Because it gives the legislature complete control over executive agency rule-making, the concept of a Regulation Review Committee would be an unconstitutional violation of the separation of powers doctrine. Except that we passed a state amendment in 1982 (Article XVIII) providing for it, so it is constitutional, at least in Connecticut.

ARTICLE XVIII.

Article second of the constitution is amended to read as follows: The powers of government shall be divided into three distinct departments, and each of them confided to a separate magistracy, to wit, those which are legislative, to one; those which are executive, to another; and those which are judicial, to another. The legislative department may delegate regulatory authority to the executive department; except that any administrative regulation of any agency of the executive department may be disapproved by the general assembly or a committee thereof in such manner as shall by law be prescribed.

Adopted November 24, 1982.

These two bills, as the titles clearly state, would drastically expand the powers of the RegsReview committee. The language of the bills is extreme. There is no effort to balance the public interest with the private/special interests which would be served by the bill.

The bills give Regs Review oversight over every existing and future agency regulation in perpetuity, with a lopsided charge that it can order the issuing agency to rescind them if a regulation is "onerous on the regulated community" without any regard to the public interest served by the regulation. There are no standards enumerated which the committee must apply in order to reach a decision. They are given free reign, without boundaries or guidance.

These bills are not fixable. The principle is so contrary to protection of the public interest that they must not go forward, regardless of any amendments. The shortcomings here are structural and fundamental, and not simply in the details.

But to point out how badly conceived this proposal is, I will offer just a few specifics:

-It calls for a public hearing in Regs Review. To my knowledge, the committee has never in its history conducted a public hearing
-The committee of subject matter cognizance, the committee which raised the original legislation, is notified only after action has already been taken to repeal
-The decision to rescind is wholly up to RegsReview, without a requirement to consult with the committee which was responsible for the regulation being created
-RegsReview, by design, has no subject matter expertise to rely on
-There is no requirement to consider the public interest served by the regulation

Again, addressing these few illustrative points does not fix the bill. It is not fixable.

Many, many regs have an impact on the regulated community. Consider the brownfield Remediation Standard Regulations (RSRs), which are agency regs. They set the standards for cleanup. What would happen if RegsReview decided the RSRs were onerous, and simply cancelled them, without regard to the benefits?

The idea is such a radical proposal that the proponents thought it would take a constitutional amendment, as found in SJR 12, to implement.

The legislature rarely, if ever, uses the phrase "deference to agency expertise". A considerable portion of the state budget goes to pay agency staff. We should respect them, and let them do the work. Asking the legislature to second guess what they do is not a prescription for sound government. Giving a single Committee the power to unilaterally rescind any existing regulation, from any state agency, simply on the grounds of "onerousness", would constitute an abnegation of the overriding mandate to protect the public interest.

Finally, there is an existing appropriate remedy to address an existing regulation which doesn't seem appropriate, or has perhaps lost its usefulness. File a bill, use the established legislative process to fully air the issue before the public, and then decide whether action is warranted.

The Sierra Club finds the proposal contained in these two bills, in a word, unacceptable.